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BOOK REVIEWS.

EDWARD N. PERKINS, *Editor-in-Charge.*

THE VISIGOTHIC CODE (FORUM JUDICUM). Translated from the Original Latin and edited by S. P. SCOTT. THE BOSTON BOOK COMPANY. 1910. pp. lxxiv, 419.

The preface to this volume, in so far as it deals with the history of Visigothic legislation, is confused and full of misstatements. It is well known that a collection of Visigothic laws was made in Gaul in the fifth century, and it is probable that it was made in the reign of Euric (A. D. 466-484); but that "this collection is unfortunately lost" (p. xxiii) is fortunately not wholly true. The editor seems not to have heard of the famous palimpsest in the Paris National Library, which contains a portion (sections 276-336) of a very early Visigothic code. This was edited by Blume in 1847 and again by Zeumer in 1894. Blume ascribed this collection to King Reccared (A. D. 568-601), but it is now generally believed to be a part of Euric's code. Many of the laws found in the palimpsest reappear as "ancient law" (*lex antiqua*) in that seventh century Visigothic code which Mr. Scott has translated. But, according to his preface, this part of the later code is wholly Roman! He says (p. xxvii) "such [laws] as are derived from Roman sources are designated [as] *antiqua*." The reviewer would be disposed to assume a misprint—Roman instead of German—were it not for other mistakes of a similar sort. Mr. Scott tells us, for example, that "according to Roman ideas, a person . . . caught in *flagrante delicto* was not entitled to a trial" (p. xxix). It is not improbable that the Romans, like other primitive peoples, may have had such ideas in a prehistoric period, but they had got rid of them at the time of the XII Tables. On the other hand, these ideas were universal among the Germans, not only in the Visigothic Kingdom but in the Empire of Charlemagne; and they played an important part in the administration of German criminal law through the greater part of the Middle Ages.

Not long after the time when the first compilation of Visigothic law was made there appeared, also in Gaul, the Visigothic collection of Roman law which is usually described as the Breviary of Alaric and which was compiled by that king for the use of his Roman subjects. Mr. Scott's statement that this collection was "the source of the subsequent Lombard and Bavarian codes" (p. xxiv) is quite baseless. There is no evidence that it was used at all in the compilation of those codes, although there is reason to believe that the laws of Euric were so used. Such mistakes as these are not trifling inaccuracies; they throw the whole relation of Roman and German elements in the European law of the sixth and following centuries into hopeless confusion. Incorrect, again, are the statements that the number of compurgators in Visigothic trials at law was originally twelve, and that compurgation was derived from the Saxons; and the assertion that this institution was "the probable predecessor of our system of trial by jury" (p. xxxviii) is hard to explain. If the word predecessor is here used in a strict sense, to indicate merely historical priority, the statement is more than probable, it is unquestionable. If, however, the editor means that the English jury grew out of the institution of com-

purgation, he is reviving a theory which no competent authority has supported since Brunner proved that the English jury was derived, by way of Normandy, from the Frankish royal inquest.

Mr. Scott calls attention to the singular combination, in the Visigothic code, of highly refined rules of Roman law, civil and canon, with crude and barbaric German customs. It would have been well to call attention, as do Ureña and other legal historians, to the almost complete disappearance, after the Moorish conquest, of the Roman institutions and rules contained in the Visigothic code, and to the recrudescence in the Christian kingdoms of Northern Spain of many German institutions and modes of legal procedure which the Visigothic code did not recognize. As Ureña points out, facts like these indicate that many of the provisions of the Visigothic code represented ecclesiastical ideas which were not realized in the social life of Spain in the seventh century. We Americans are not the first people who have been content to put their moral aspirations in the statute book, "um es am Ende gehn zu lassen wie's Gott gefällt."

Mr. Scott does not indicate what text of the Visigothic code he has translated, but he has apparently used the edition published under the auspices of the Spanish Royal Academy in 1815. There is no evidence that he has even consulted the more carefully edited text which Zeumer prepared for the *Monumenta Germaniae*, and which appeared in 1894. The translation, so far as the reviewer has been able to determine by comparing a few passages, is not satisfactory. The seventh century Latin unquestionably presents some difficult problems, and the Castilian version does not always solve them. Mr. Scott, however, finds difficulties where there are none; and when he finds a difficulty he simply dodges it, using some general and vague phrase. For example, in 11, 2, 1 the legislator declares that a plea that the plaintiff failed to bring action against defendant's predecessor in title is no bar to suit against the present possessor unless the period of limitation has expired. The translator entirely misses the point, because he does not know what he could have learned from any elementary treatise on Roman law that *auctor* means predecessor in title.

This volume was prepared under the auspices of the Comparative Law Bureau of the American Bar Association. If the laudable effort of this Association to make accessible to English readers some of the more important monuments of European legal history is to be continued, greater care should be exercised in the selection of translators and editors.

M. S.

THE LAW APPLIED TO MOTOR VEHICLES. By CHARLES J. BABBITT. Washington, D. C.: JOHN BRYNE & Co. 1911. pp. 1217.

The body of law which may be properly called "automobile law," if confined strictly within its true limits, would require nothing like 1217 pages. The laws exclusively applicable to automobiles are few in number, relating to but few topics, and consist largely of statutes, and the principles governing their interpretation; of the constitutional questions involved in such statutes and the decisions dealing with such questions; of the question of the wisdom of the rules laid down in some motor vehicle statutes and, incidentally, but only incidentally, brief statements showing how well known principles of law have been applied to motor vehicles.